

Congressmen Jerry Kleczka (D-WI) and Pete Stark (D-CA) today introduced "The Hospital Investment Act of 2001" which would close the loophole contained in current conflict of interest laws exempting physician self-referrals to hospitals in which they have an ownership interest.

The laws, commonly called Stark I and Stark II, ban physician referral of Medicare patients to laboratories and other auxiliary services owned by the physician. These restrictions were passed in 1989 and 1993 respectively after the HHS Inspector General discovered that Medicare patients received 45% more laboratory services when the doctor owned the lab than when the doctor did not.

Hospital ownership was exempted as long as the physician's financial interest was in the comprehensive hospital and not just the department or clinic where the physician practices. With the proliferation of freestanding specialty hospitals, such as heart, orthopedic, or maternity, the legality of specialists referring patients to their own facility for personal financial gain is questionable.

The specialty, or "boutique" hospitals are usually joint ventures between investors and physicians, and in many cases physicians get preferential terms of ownership. Clearly these arrangements are a violation of conflict of interest and conveniently circumvent coverage of the Stark laws which were designed to halt self-referral in the first place.

The Kleczka/Stark Hospital Investment Act of 2001 would immediately close the hospital loophole by prohibiting preferential physician hospital ownership. Under the legislation, physicians would be allowed to refer patients to a hospital in which they had an ownership interest, but only if the interest was purchased on terms also available to the general public at the time. Failure to comply would result in civil penalties of up to \$15,000 per referral and up to \$100,000 for each referral scheme. Also, the physician would be denied entry or participation in the Medicare program.

"This is tough medicine for an immediate cure to a very sick trend," Kleczka said. "These boutique hospitals are siphoning off the most profitable business from the not-for-profit hospitals and lining the pockets of specialty physicians and investors. The conflict for doctors to choose between maximizing their investment return or providing reasonable patient treatment must be curtailed!"

Rep. Stark said: "When investors strip high profit services, such as cardiology and

orthopedics, from a full scale hospital and move them to a specialty hospital, they deprive the full scale hospital of crucial income needed to provide less profitable services, such as emergency room care. This bill will close the loophole in the law that permits this practice.”

Congressmen Stark and Kleczka are both members of the Ways & Means Committee’s Subcommittee on Health, where the bill will be referred.

The Milwaukee Journal Sentinel recently reported on two local hospital groups that have announced plans to open free-standing heart hospitals. In both instances, the hospitals will be owned by investors and physicians, which is part of a nationwide trend.